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U.S. Department of Homeland Security

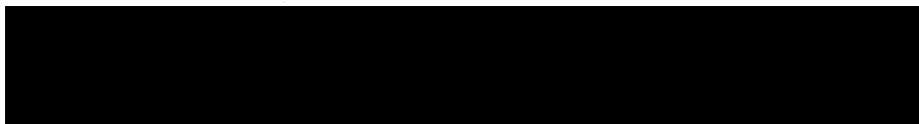
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536



JUL 16 2003

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



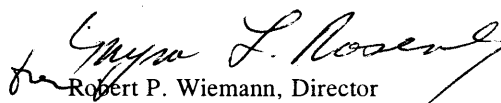
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as an assistant pastor.

The director denied the petition, finding that the petitioner failed to establish that the position qualifies as that of a religious worker and that the beneficiary had been continuously employed in the proffered position for the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner asserts that the Bureau failed to give proper consideration to all the evidence submitted.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a religious organization,

incorporated in the state of New York, and affiliated with the Pentecostal movement. The beneficiary is a native and citizen of Nigeria. The evidence on the record indicates that the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure on June 8, 1998.

The first issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

Initially, the petitioner indicated that the beneficiary's job duties require an ordained Pastor. The petitioner stated that the beneficiary had been "placed in charge of religious education, teaching bible classes and liturgical hymns . . . and conducting prayer meetings." In response to the director's request for additional evidence, the petitioner listed the beneficiary's job duties as follows:

- a. Preparation and serving in Communion Service.
- b. Teaching class of new believers.
- c. Preparation and Baptism Candidates.
- d. Scheduling counseling of engaged couples for wedding.
- e. Preparation and dedication of infants.
- f. Calling & visiting members.
- g. Leadership role in micro church.
- h. Visitation of infirmed in the hospitals.
- i. Apostle Onyenze also spearhead the choral group (Choir).
- j. He receives compensation of \$6,000.00 in 1999 and \$6,000.00 per annum in 2000 also room accommodations.

The petitioner also provided the Bureau with a weekly and daily schedule of the beneficiary's duties.

The director determined that the described duties do not necessarily require specialized religious training or involve traditional religious functions.

On appeal, counsel for the petitioner asserts that the director's decision was arbitrary and capricious.

The director requested that the petitioner submit copies of published material about the petitioner that shows which occupations are considered religious occupations. In response, the petitioner provided the Bureau with a published booklet titled "Management Hierarchy in the Eternal Sacred Order of the Cherubim and Seraphim." The booklet does not mention assistant pastors or indicate that apostles and pastors are traditionally full-time salaried employees.

After a review of the record, it is concluded that the petitioner has not established that the position of "assistant pastor" constitutes a qualifying religious occupation.

The petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, in reaching a determination on whether a position constitutes a religious occupation for the purpose of special immigrant classification, the Bureau must distinguish between common participation in the religious life of a denomination and engaging in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. Such voluntary positions filled by members of a congregation are not considered religious occupations. The Bureau interprets its own regulations to hold that religious occupations are full-time paid positions. While participation with youth is a tradition in many denominations, there is no evidence that the instant position is a traditional full-time paid position with the prospective employer or its denomination at large. Therefore, it must be concluded that the petitioner has failed to establish that the proposed position constitutes a qualifying religious occupation.

The second issue to be addressed in this proceeding is whether the petitioner established that the beneficiary was continuously engaged as an assistant pastor for at least the two years preceding

the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on April 20, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the occupation of assistant pastor since at least April 20, 1999.

In this case, an official of the petitioning church wrote that the beneficiary had served as an assistant pastor in Nigeria from 1988 until his arrival in the United States in June 1998 and that the beneficiary "assumed these very duties" from September 1998 through the present.

The director found that the evidence to support this claim consisting of copies of the beneficiary's income tax returns for 1999 and 2000 insufficient to establish that the beneficiary had been continuously engaged in the religious occupation for the preceding two years in the absence of W-2's (Wage and Tax Statements). The AAO concurs.

Beyond the decision of the director, the petitioner has not established that it qualifies as a bona fide nonprofit religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i). Since the appeal will be dismissed on the grounds discussed above, this issue need not be analyzed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.